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November 13, 2019

Cameron Quinn, Officer for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
245 Murray Lane, SW Building 410, Mail Stop 0190
Washington, D.C. 20528

Joseph Cuffari, Inspector General
U.S. Department of Homeland Security
245 Murray Lane, S.W., Mail Stop 0305
Washington, D.C. 20528-0305

Dear Ms. Quinn and Mr. Cuffari:

This letter is a follow up to our initial inquiry to the Department of Homeland Security on the impact of the Migrant Protection Protocols on LGBT asylum seekers. According to the agency's July 19th response, "the guidance for MPP implementation provides that statutory authority under INA Section 235(b)(2)(C) will be implemented consistent with principles of nonrefoulement." The principles of nonrefoulement as established under international law, "prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment or other serious human rights violations."¹

We write to request an immediate investigation by OIG and CRCL into the systemic issues that have forced LGBT asylum seekers to be returned to Mexico and placed in danger.

We are alarmed that more than 50,000 asylum seekers and migrants have been forced back to Mexico, including individuals who identify as LGBT.² Most recently, on October 7th, twelve asylum seekers were returned to the Mexican town of Matamoros which the U.S Department of State Travel Advisory has designated as a Level 4 area, the "highest advisory level due to greater likelihood of life-threatening risks."³

Under MPP guidance, "a third-country national should not be involuntarily returned to Mexico pursuant to Section 235(b)(2)(C) of the INA if the alien would more likely than not be

¹ <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>

² <https://abcnews.go.com/Politics/details-dire-conditions-pregnant-women-trumps-remain-mexico/story?id=65910150>

³ <https://www.npr.org/2019/10/08/768226927/12-asylum-seekers-juli-n-castro-escorted-to-the-u-s-border-sent-back-to-mexico>

persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion (unless such alien has engaged in criminal, persecutory, or terrorist activity described in Section 241(b)(3)(B) of the INA), or would more likely than not be tortured, if so returned pending removal proceedings.”⁴

LGBT asylum seekers are more likely to face violence in Mexico, with two-thirds reported suffering sexual and gender-based violence.⁵ To date, there have been approximately 340 public reports of rape, kidnapping, torture, and other violent attacks against asylum seekers returned to Mexico under MPP.⁶ Unquestionably, this figure represents an undercount of potential incidents that have not been reported. It is unacceptable to return asylum seekers, especially those who are vulnerable individuals and exempt from MPP to Mexico where they face danger.

In addition to MPP failing to maintain the principles of nonrefoulement, there are severe concerns that asylum seekers are facing additional barriers in presenting their claim. MPP policy states that, “where an alien affirmatively states a concern that he or she may face a risk of persecution on account of a protected ground or torture upon return to Mexico, CBP should refer the alien to USCIS, which will conduct an assessment to determine whether it is more likely than not that the alien will be subject to persecution or torture if returned to Mexico.”⁷

MPP policy places an additional burden on an asylum seeker as they must affirmatively express a fear to CBP personnel of remaining in Mexico and facing persecution. Even if fear of returning to Mexico is expressed, they must then prove to an asylum officer- without access to counsel, consultation, or a rest period that it is more likely than not that they will face persecution or torture based on a statutorily-protected ground. This screening process is severely flawed and places an impossible standard to meet.

Furthermore, data from the Syracuse University Transaction Records Access Clearinghouse shows that 99% of MPP asylum seekers did not have counsel.⁸ Asylum seekers are five times more likely to win their cases if they are represented by counsel, and this policy change adds an additional barrier to their asylum claims.⁹

MPP policy goes against our international treaties obligations and domestic laws and should be immediately halted. We demand that the Office of Inspector General (OIG) and the Office for Civil Rights and Civil Liberties (CRCL) open an investigation into the return of LGBT asylum seekers to Mexico, whether the returns are in line with current DHS policies under MPP, and whether those policies are in line with the law including our treaty obligations.

Sincerely,

⁴ <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2019/2019-01-28-Guidance-for-Implementing-Section-35-b-2-C-INA.pdf>

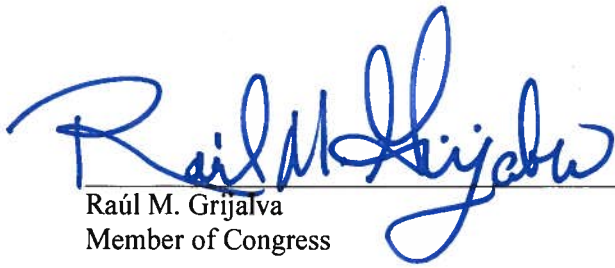
⁵ <https://www.amnestyusa.org/wp-content/uploads/2017/11/No-Safe-Place-Briefing-ENG-1.pdf>

⁶ <https://www.humanrightsfirst.org/sites/default/files/hrfordersfromabove.pdf>

⁷ <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2019/2019-01-28-Guidance-for-Implementing-Section-35-b-2-C-INA.pdf>

⁸ <https://trac.syr.edu/whatsnew/email.190729.html>

⁹ <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court>


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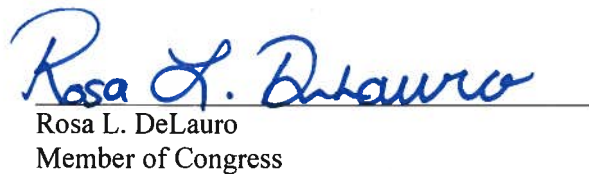

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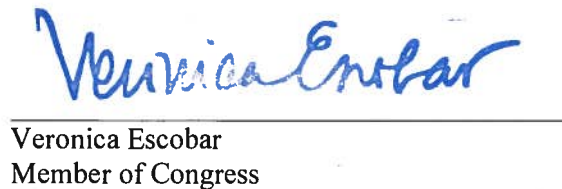

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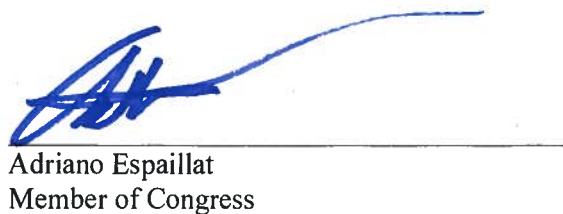

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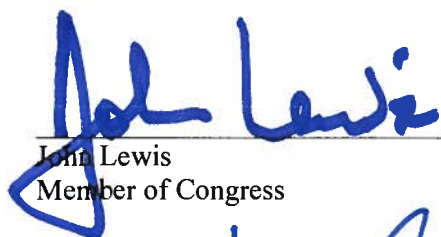
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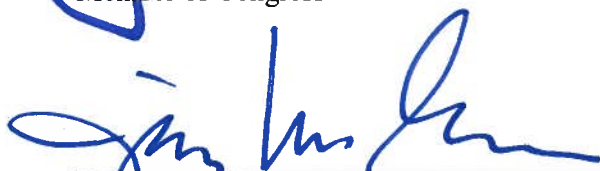
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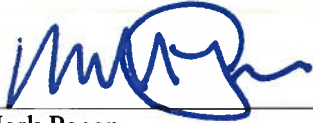
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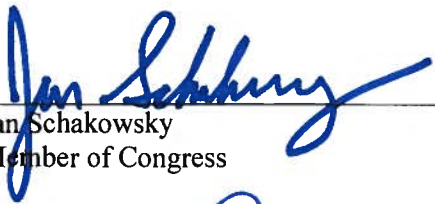
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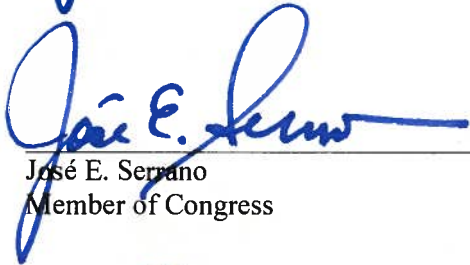
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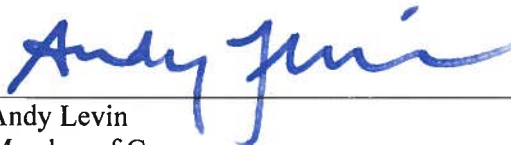
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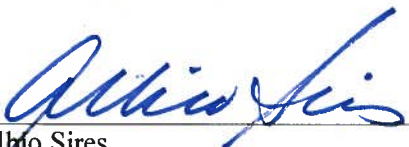
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